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its possessor to give the villages to those persons in the event specified. It was hardly contended that a present grant to persons unborn, and who may never come into existence, is effectual; and a covenant of that nature in favour of non-existing covenantees is open to the same objections. It is immaterial in what way an interest such as the appellants' claim is created. If it prevents the owner from alienating his estate, discharged of such future interest, before the emergence of the condition, and that event may possibly never occur, it imposes a restraint upon alienation which is contrary to the principles of Hindu law.

Their Lordships are accordingly of opinion that the judgment of the High Court must be affirmed and the appeal dismissed; and they will humbly advise Her Majesty to that effect.

The appellants must pay the costs of this appeal.

Appeal dismissed with costs.

Solicitors for the appellants: Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent: Messrs. *Watkins & Lattey.*

C. B.

CRIMINAL MOTION.

Before Mr. Justice Mitter and Mr. Justice Macpherson.

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November 26.

ABAYESWARI DEBI (PETITIONER) *v.* SIDHESWARI DEBI (OPPOSITE PARTY).*

Superintendence of High Court—Criminal Procedure Code (Act X of 1882, s. 144)—Charter Act, 24 & 25 Vic., c. 104, s. 15—Order to abstain from certain act.

A Deputy Commissioner passed an order, under s. 144 of the Code of Criminal Procedure, prohibiting a person from collecting any rent or attempting to collect rent, either herself or through any of her officers or servants from the ryots of two specified pergunnahs. And also from effecting any sale or putting in hand any transaction with regard to standing trees or collected timbers in an estate, or erecting any *Adda* or *Kuchari* in such pergunnahs for a period of two months. Upon an application to set aside such order:

* Criminal Motion No. 371 of 1888, against the order passed by M. A. Gray, Esq., Deputy Commissioner of Goalpara, dated the 1st of October 1888.

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Held, that the High Court had jurisdiction, under s. 15 of the Charter Act, to set it aside if it were made without jurisdiction.

Held, further, that the acts which the petitioner was directed to abstain from were not acts which come within the meaning of the words "a certain act" as used in s. 144 of the Code of Criminal Procedure, and that the order should be set aside.

THIS was an application to set aside an order passed by the Deputy Commissioner of Goalpara, under s. 144 of the Criminal Procedure Code, prohibiting the petitioner from collecting any rents, either herself or through her servants, from the ryots of certain pergunnahs, and doing other specified acts in the Bijni estate.

The order complained of was made on the 1st October 1888 and was as follows :—

"To

RANI ABAYESWARI DEBI,

Goalpara.

"WHEREAS it has been known from various Police Reports, which are received in numbers every day, that many persons are being deputed and sent from your side to collect rents from the ryots of pergunnahs Habraghat and Khutaghat, and also to get possession of and to sell the timbers collected from the forest of the Bijni Estate:

"And whereas, on an inspection of the Register of the Collector of this District, it is seen that Rani Sidheswari Debi, as successor of the late Raja Kumud Narain Bhup, is the sole present proprietor (by the virtue of the registration of her name according to law) of the Bijni zemindari, and you have not yet got your name registered as proprietor of the whole or part of the said zemindari, and you have not yet established your possessory right and interest to the whole or part of the said estate:

"And whereas, on perusing the aforesaid several Police Reports, I have clearly understood that, if there be any collection of rent or attempt for collecting rent in this way, or if your officers, servants, or followers have anything to do with the timbers collected and stocked on your behalf from the Bijni estate, then owing to the rivalry between your people and the people of the legally registered proprietor Rani Sidheswari, which cannot be checked, the breach of peace, riots and bloodshed will unavoidably ensue. I therefore prohibit you by this from collecting any

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rent or attempting to collect rent, either yourself or through any of your officers and servants, from the ryots of pergunnahs Habraghat and Khutaghat, and also from effecting any sale, or put in your hands any transaction with regard to standing trees or collected timbers in the Bijni estate, or erecting any *Adda* or *Kuchari* in the aforesaid two pergunnahs within the period of two months from date, or until the final decision of the case under s. 145 of the Criminal Procedure Code, or until further orders."

The petitioner applied under s. 15 of the Charter Act and s. 439 of the Criminal Procedure Code to have the order set aside. The petition on which the application was made was in the following terms:—

1. That the Deputy Commissioner of Goalpara made an order on the 14th June 1888, purporting to have been made under s. 144 of the Code of Criminal Procedure, prohibiting your petitioner's *Naib*, Brojo Nath Dass, from making collection of rent on behalf of your petitioner from her extensive zemindari pergunnah Khutaghat in the district of Goalpara.

2. That against the said order your petitioner moved this Honorable Court on the 21st June 1888, and your Lordships were pleased to issue a rule to show cause why the same should not be set aside.

3. That again on the 28th June 1888 the said Deputy Commissioner made a similar order against your petitioner personally, and your petitioner moved this Honorable Court against the said order on the 9th July 1888, when a rule was granted by the Chief Justice and Mr. Justice Rampini to show cause why the same should not be set aside.

4. That both the rules, Nos. 201 and 227 of 1888, were eventually heard by Mr. Justice Wilson and Mr. Justice Rampini on the 3rd and 10th of August 1888, and the following order was passed: "With regard to the order complained of, we entertain the greatest doubt whether it is a legal order, that is, an order which the Deputy Commissioner had any right to make under s. 144; but inasmuch as it expires within a very few days we think it is not necessary for us to make any order on the subject."

5. That your petitioner has been peacefully collecting rent from such ryots of her extensive zemindari as willingly paid her any, but notwithstanding the aforesaid order of this Honorable Court the Deputy Commissioner of Goalpara has again made an order and issued a notice upon your petitioner on the 1st October instant, a copy whereof is herewith annexed, purporting to have been made under s. 144 of the Criminal Procedure Code, and prohibiting your petitioner from receiving any rent and forest dues which your petitioner can get without the least probability of the breach of peace.

Your petitioner begs to submit that the said order is quite contrary to law and ought to be set aside on the grounds :—

(*a*) That the said section does not empower any Magistrate to prevent any person from collecting rents from the tenants of any estate or issuing passes for selling forest produce.

(*b*) That the effect of such an order is to deprive your petitioner of all possession in the property.

Upon the application being made, a rule was issued calling on the opposite party to show cause why the order complained of should not be set aside.

The rule now came on for hearing.

Mr. *M. Ghose* and Baboo *Umbica Churn Bose* in support of the rule.

Baboo *Iswar Chunder Chukerbutty* and Baboo *Bassunt Comar Bose* for the opposite party.

Mr. *Ghose*.—The order is without jurisdiction. *Firstly*, because it is vague and indefinite in its character; *secondly*, because it interferes with the manifest legal rights of the petitioner to receive rents, which her ryots might willingly pay her; and, *thirdly*, because it is practically a repetition of an expired order and an evasion of the restriction imposed by the last clause of s. 144. The High Court has jurisdiction to set aside under s. 15 of the Charter orders professedly made under s. 144 of the Criminal Procedure Code, but not really coming within its scope. The question of this Court's powers to interfere was fully considered in *Gopi Mohun Mullick* v. *Taramoni Chowdhrani* (1). Since then

(1) I. L. R., 5 Calc., 7.

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it has been held that this Court has power to set aside orders made under s. 144, but without jurisdiction. In *Shurut Chunder Bannerjee* v. *Bama Churn Mookherjee* (1) it was contended that this Court could not interfere with orders made under s. 144, but White, J., decided against that contention. In *Bradley* v. *Jameson* (2), and *In re Prayag Singh* (3), orders made on the corresponding section of the old Code were set aside as being in excess of the Magistrate's power.

[MITTER, J.—I think we can interfere if you satisfy us that the order itself is one which the Magistrate had no power to make. The terms of s. 144 are very wide.]

The section gives power to make a certain order, which must mean a definite and precise order and not a general one, forbidding a man to refrain from doing a series of acts which he has ordinarily a right to do. The section must be very strictly construed. It could scarcely have been intended to invest Magistrates with power to interfere with the legal rights of persons. Could a Magistrate make an order directing a person to refrain from taking his food or from sleeping at night or from living in his own house, on the ground that the Magistrate thought that such an order was needed for the purposes specified in the section? Even if the Magistrate has such a power the order must be *one specified act* which must be complete in itself and of a definite character. Here the order is not to collect rents from the ryots of two pergunnahs. "Collection of rent" is not a definite act in itself, as it involves payment and receipt by several persons. Receipt of rent from different ryots is not a single act, and therefore does not come within the scope of the section.

Baboo *Iswar Chunder Chuckerbutty* contended that s. 144 was very comprehensive in its terms, and that the High Court had no power to interfere with an order made under that section.

The judgment of the High Court (MITTER and MACPHERSON, JJ.) was as follows:—

The order complained of in this case was passed under s. 144 of the Criminal Procedure Code. The authorities are clear upon this point that, if the Magistrate had no jurisdiction to

(1) 4 C. L. R., 410. (2) I. L. R., 8 Calc., 580.
(3) I. L. R., 9 Calc., 103.

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make the order, this Court can interfere under s. 15 of the Charter Act. Therefore the only question that we have to consider is whether the order complained of is one which the Magistrate could make under s. 144 of the Code. The section says that: "In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order, stating the material facts of the case and served in manner provided by s. 134, direct any person to abstain from a certain act," &c., &c. Now by the words "a certain act" we understand that it must be a definite act. We have considered the order passed in this case, and we are of opinion that the acts which the petitioner is directed to abstain from are not acts which come within the meaning of the words "a certain act." She is directed not to collect rents from the ryots of two pergunnahs; no particular ryots are mentioned, but the rent is not to be collected from the ryots of two pergunnahs generally. We do not think that such an order as this comes within the words "certain act." Upon this ground alone we set aside the order and make the rule absolute.

H. T. H. *Rule made absolute and order set aside.*

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Banerjee.

PANNA LALL (DECREE-HOLDER) *v.* KANHAIYA LALL (JUDGMENT-DEBTOR).* 1888 *November* 19.

Insolvency—Civil Procedure Code, 1882, *ss.* 336, 337—*Act VI of* 1888—*Debt not in schedule—Execution of decree obtained against insolvent for such debt—Scheduled debts.*

A person, who has taken the benefit of the insolvent sections of the Civil Procedure Code, and who is undischarged, but has not inserted in his schedule a debt for which a decree is subsequently obtained, is not protected from arrest in execution of such decree, merely because his property is

* Appeal from Order No. 267 of 1888, against the order of J. F. Stevens, Esq., Judge of Gya, dated the 5th of June 1888.